

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARYANN RUSH  
3314 Chippendale St.  
Philadelphia, PA 19136

Plaintiff,

v.

WEST GERMAN MOTORS IMPORT, INC.:  
d/b/a WEST GERMAN BMW  
500 Pennsylvania Ave.  
Fort Washington, PA 19034

Defendant.

CIVIL ACTION

DOCKET NO.: \_\_\_\_\_

**JURY TRIAL DEMANDED**

**CIVIL ACTION COMPLAINT**

Maryann Rush (*hereinafter* referred to as “Plaintiff,” unless indicated otherwise), by and through her undersigned counsel, hereby avers as follows:

**INTRODUCTION**

1. This action has been initiated by Plaintiff against West German Motors Import, Inc. d/b/a West German BMW (*hereinafter* referred to as “Defendant”) for violations of the Americans with Disabilities Act, as amended (“ADA” - 42 USC §§ 12101 *et. seq.*), the Family and Medical Leave Act (“FMLA” – 29 U.S.C. § 2601 *et. seq.*), and the Pennsylvania Human Relations Act (“PHRA”).<sup>1</sup>

2. Plaintiff asserts, *inter alia*, that she was discriminated against and unlawfully terminated by Defendant. As a direct consequence of Defendant’s unlawful actions, Plaintiff seeks damages as set forth herein.

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<sup>1</sup> Plaintiff’s claims under the PHRA are referenced herein for notice purposes. She is required to wait 1 full year before initiating a lawsuit from date of dual-filing with the EEOC. Plaintiff must however file her lawsuit in advance of same because of the date of issuance of her federal right-to-sue letter. Plaintiff’s PHRA claims will mirror identically her federal claims under the ADA.

### **JURISDICTION AND VENUE**

3. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under laws of the United States and seeks redress for violations of federal laws. There lies supplemental jurisdiction over Plaintiff's state-law claims because they arise out of the same common nucleus of operative facts as Plaintiff's federal claims asserted herein.

3. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction in order to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because Defendant is deemed to reside where they are subjected to personal jurisdiction, rendering Defendant resident of the Eastern District of Pennsylvania.

5. Plaintiff filed a Charge of discrimination and retaliation with the Equal Employment Opportunity Commission ("EEOC") and also dual-filed said charge with the Pennsylvania Human Relations Commission ("PHRC"). Plaintiff has properly exhausted her administrative proceedings before initiating this action by timely filing her Charge with the EEOC, and by filing the instant lawsuit within 90 days of receiving a right-to-sue letter from the EEOC.

### **PARTIES**

6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

7. Plaintiff is an adult individual, with an address as set forth in the caption.

8. West German Motors Import, Inc. d/b/a West German BMW is a car dealership at which Plaintiff was hired through and worked at the location at the above captioned address.

9. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for the Defendant.

### **FACTUAL BACKGROUND**

10. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

11. Plaintiff was employed by Defendant from in or about June 17, 2019 until her unlawful termination (as discussed *infra*) on or about July 16, 2020.

12. During her tenure, Plaintiff performed administrative duties, including but not limited to the duties of a title clerk.

13. Throughout her employment with Defendant, Plaintiff was a hard-working employee who performed her job well; however, Plaintiff had never worked in the automotive or title business, so Defendant's management knew and expected that it would take some time for Plaintiff to become trained and learn her job role.

14. During the entire length of Plaintiff's employment, she was supervised by Randi Nilsen (*hereinafter* "Nilsen").

15. While Nilsen was not the most welcoming manager, she did inform Plaintiff in or about October of 2019, when she inquired about her longevity with the company (as Plaintiff was debating on filing for retirement with a job that Plaintiff had with the City of Philadelphia and wanted to make sure her job with Defendant would be long term), that she/the company wanted Plaintiff to stay and that she was happy with Plaintiff's work.

16. As a result, Plaintiff submitted her retirement with the City of Philadelphia and rejected an offer to interview as a 911 operator with the city (as Plaintiff believed her position with Defendant was secure based upon Nilsen's representations).

17. Plaintiff has and continues to suffer from Crohn's disease. Plaintiff was also diagnosed with viral skin cancer in or about October of 2019.

18. As a result of her aforesaid health conditions, Plaintiff (at times) is limited in her ability to perform some daily life activities including breathing, moving, sleeping, standing, and bending.

19. Despite her aforesaid health conditions and limitations, Plaintiff was able to perform the duties of her job well with Defendant; however, she did require reasonable medical accommodations at times (discussed further *infra*).

20. In or about the beginning of 2020, Plaintiff apprised Defendant's management of her health conditions and underwent surgery on her leg (related to Plaintiff cancer diagnosis).

21. Plaintiff then took time off related to her surgery and continued to take intermittent time off to care for and treat for her health conditions in the months following Plaintiff's surgery.

22. In response to disclosing Plaintiff's health conditions and need for reasonable accommodations under the ADA, Plaintiff was met with severe hostility and animosity from Nilsen, including but not limiting to making negative comments about Plaintiff's need for time off.

23. For example, when Plaintiff needed to take a day off or come in late to care for or treat for Plaintiff's health conditions, Nilsen would say "Again with this crap?" and "You're going to be late again?" She would also make comments such as that Plaintiff felt she needed special treatment or that Defendant was *always* accommodating Plaintiff.

24. In or about March of 2020, Defendant closed due to the Covid-19 pandemic. In or about April of 2020, Defendant re-opened and Plaintiff returned to work.

25. Plaintiff continued to have doctor's appointments to treat for her health conditions after returning in April of 2020; however, Plaintiff was too scared to take much time off due to Nilsen's constant harassment.

26. Plaintiff thus took approximately 2 days off between when she returned in April of 2020 and when she was ultimately terminated on July 16, 2020, including a day in July of 2020.

27. Plaintiff continued to be harassed for taking time off as a result of her health condition and was faced with comments such as "How long is this going to continue?" Plaintiff was also subjected to pretextual discipline shortly after taking intermittent time off.

28. In addition to making negative comments about Plaintiff's need for intermittent time off (as a reasonable accommodation under the ADA), Nilsen also spoke to other employees about Plaintiff's health and accommodation needs.

29. Plaintiff thus expressed to Nilsen that Plaintiff did not like the way she spoke about Plaintiff's health conditions or that she spoke to other employees about Plaintiff's disabilities. Plaintiff also complained to Robert Cesarini (VP/General Manager) about Nilsen's discriminatory behavior and her sharing Plaintiff's health information with staff.

30. Despite Plaintiff's aforesaid complaints, no proper measures were taken to remedy the situation and Plaintiff continued to be harassed and retaliated against by Nilsen.

31. On or about July 16, 2020, Plaintiff was brought into a meeting and terminated by Nilsen for allegedly failing to follow instructions – which is completely pretextual. However, two weeks prior to Plaintiff's termination, Plaintiff had noticed that her job had been posted on

Indeed.com. When Plaintiff questioned Nilsen about it, she told Plaintiff that it was none of her business.

32. Plaintiff believes and therefore avers that she was subjected to a hostile work environment, issued pretextual discipline, and terminated from Defendant because of: (1) her known and/or perceived health problems; (2) her record of impairment; (3) her requested accommodations; (4) Defendant's failure to properly accommodate her; and/or (5) in retaliation for requesting reasonable accommodations.

### **COUNT I**

#### **Violations of the Americans with Disabilities Act, as amended ("ADA")**

#### **[(1) Actual/Perceived/Record of Disability Discrimination; [2] Retaliation; [3] Failure to Accommodate; and [4] Hostile Work Environment)**

33. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

34. Plaintiff suffered from qualifying health conditions under the ADA which affected her ability (at times) to perform some daily life activities including breathing, moving, sleeping, standing, and bending.

35. Despite Plaintiff's aforementioned health conditions and limitations, she was still able to perform the duties of her job well with Defendant; however, Plaintiff did require reasonable accommodations at times.

36. Plaintiff kept Defendant's management informed of her serious medical conditions and reasonable accommodations.

37. Defendant's failed to accommodate Plaintiff's reasonable requests relating to her health conditions, and Plaintiff was abruptly terminated from Defendant shortly after requesting/utilizing reasonable accommodations.

38. Plaintiff believes and therefore avers that she was subjected to a hostile work environment, issued pretextual discipline, and terminated from Defendant because of: (1) her known and/or perceived health problems; (2) her record of impairment; (3) her requested accommodations; (4) Defendant's failure to properly accommodate her; and/or (5) in retaliation for requesting reasonable accommodations.

39. These actions aforesaid constitute violations of the ADA.

**COUNT II**  
**Violations of the Family and Medical Leave Act ("FMLA")**  
**(Interference & Retaliation)**

40. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

41. Plaintiff became an eligible employee under the definitional terms of the FMLA during her last month of employment, 29 U.S.C. § 2611(a)(i)(ii).

42. Plaintiff requested leave from Defendant, her employers, with whom she had been employed for at least twelve months pursuant to the requirements of 29 U.S.C.A § 2611(2)(i).

43. Plaintiff had at least 1,250 hours of service with Defendant during her last full year of employment.<sup>2</sup>

44. Defendant is engaged in an industry affecting commerce and employ fifty (50) or more employees for each working day during each of the twenty (20) or more calendar work weeks in the current or proceeding calendar year, pursuant to 29 U.S.C.A § 2611(4)(A)(i).

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<sup>2</sup> *Bowyer v. Dish Network, LLC*, Civil Action No. 01-1496, 2010 U.S. Dist. LEXIS 14680, at \* 29 (W.D. Pa. Feb. 19, 2010) (holding all intermittent periods of employment must be considered in the aggregate as to the 1-year employment requirement, as such time by an employee need not be continuous to afford FMLA protection); *Cox v. True N. Energy, LLC*, 524 F. Supp. 2d 927, 938-40 (N.D. Ohio 2007) (holding any argument by a defendant that the 1-year service requirement must be continuous under the FMLA is meritless); *Bell v. Prefix, Inc.*, 422 F. Supp. 2d 810, 813 (E.D. Mich. 2006) (holding that "[t]he plain language of the statute does not . . . support defendant's contention that the 12 months must be continuous"); *Rucker v. Lee Holding Co.*, 471 F.3d 6, 13 (1st Cir. 2006) (same); *Lange v. Showbiz Pizza Time*, 12 F. Supp. 2d 1150, 1153 n.1 (D. Kan. 1998) ("According to the regulations implementing the FMLA, . . . the twelve months 'need not be consecutive months.'").

45. Plaintiff was entitled to receive leave pursuant to 29 U.S.C.A § 2612 (a)(1) for a total of twelve (12) work weeks of leave on a block or intermittent basis and Plaintiff requested FMLA-qualifying leave.

46. Defendant committed interference and retaliation violations of the FMLA by: (1) terminating Plaintiff for requesting and/or exercising her FMLA rights and/or for taking FMLA-qualifying leave; (2) by considering Plaintiff's FMLA leave needs in making the decision to terminate her; (3) terminating Plaintiff to intimidate her and/or prevent her from taking FMLA-qualifying leave in the future; (4) by making negative comments and/or taking actions towards her that would dissuade a reasonable person from exercising her rights under the FMLA.

47. These actions as aforesaid constitute violations of the FMLA.

**WHEREFORE**, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to be prohibited from continuing to maintain their illegal policy, practice or custom of discriminating/retaliating against employees and are to be ordered to promulgate an effective policy against such unlawful acts and to adhere thereto;

B. Defendant is to compensate Plaintiff, reimburse Plaintiff and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to past lost earnings, future lost earnings, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. Plaintiff should be accorded those benefits illegally withheld from the date she first suffered retaliation/discrimination at the hands of Defendant until the date of verdict;

C. Plaintiff is to be awarded punitive damages, as permitted by applicable law(s) alleged asserted herein, in an amount believed by the Court or trier of fact to be appropriate to



punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

D. Plaintiff is to be accorded any and all other equitable and legal relief as the Court deems just, proper and appropriate including for emotional distress;

E. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law;

F. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth in applicable federal law; and

G. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

**KARPF, KARPF & CERUTTI, P.C.**

By: \_\_\_\_\_



Ari R. Karpf, Esq.  
3331 Street Road  
Two Greenwood Square  
Building 2, Ste. 128  
Bensalem, PA 19020  
(215) 639-0801

Dated: February 22, 2021

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Maryann Rush

CIVIL ACTION

v.

West German Motors Import, Inc. d/b/a West German BMW

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

2/22/2021

**Date**

**Attorney-at-law**

**Plaintiff**

**Attorney for**

(215) 639-0801

(215) 639-4970

akarpf@karpf-law.com

**Telephone**

**FAX Number**

**E-Mail Address**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**DESIGNATION FORM**

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 3314 Chippendale Street, Philadelphia, PA 19136

Address of Defendant: 500 Pennsylvania Avenue, Fort Washington, PA 19034

Place of Accident, Incident or Transaction: Defendant's place of business

**RELATED CASE, IF ANY:**

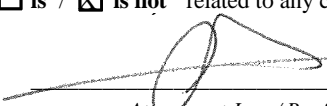
Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- |  |                              |  |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?            | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/22/2021

  
Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

**CIVIL: (Place a ✓ in one category only)**

**A. Federal Question Cases:**

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases
- (Please specify): \_\_\_\_\_

**B. Diversity Jurisdiction Cases:**

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): \_\_\_\_\_
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases
- (Please specify): \_\_\_\_\_

**ARBITRATION CERTIFICATION**

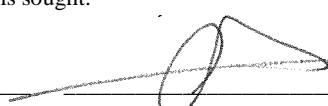
(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Ari R. Karpf, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 2/22/2021

  
Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

